IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.365 of 2004

Date of decision : August 21, 2007

Bhagwan Dass and another **…Appellants.**

Versus

State of H.P. **…Respondent.**

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The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellants : Mr.Anand Sharma, Advocate & Ms Bhavna Dutta, Advocate, vice Mr. Sandeep Dutta, Advocate.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Appellants Bhagwan Dass and Puran Dass have been convicted of an offence under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act, for allegedly being in exclusive and conscious possession of 1.400 kgs. and 1.200 kgs. of Charas, respectively, and sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of Rs.1,00,000/- each, in default of payment of fine to undergo rigorous imprisonment for a further period of two years each.

3. The only submission that has been made on behalf of the appellants by their counsel is that the appellants were sent up for trial for possessing *Charas* and the *Charas*, as per definition contained in

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Whether reporters of the local papers may be allowed to see the judgment?

sub-clause (a) of Clause (iii) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, means resin, in whatever form, whether crude or purified, obtained from cannabis plant and also includes concentrated preparation known as Hashish oil or liquid Hashish. It has been submitted that in the present case, as per report of the Chemical Examiner, the entire sample stuff was not resin or say *Charas*, but only a part of it, to the extent of 13.23 per cent in the case of Bhagwan Dass and 17.41 per cent in the case of Puran Dass, was resin and, hence, the appellants cannot be said to be in possession of 1.400 kgs and 1.200 kgs. of *Charas,* respectively. He says that what was in possession of the appellants was not whole *Charas* but something which included *Charas* (resin) to the extent of 13.23 per cent and 17.41 per cent only and the rest of the stuff was some unknown substance about which report of the Chemical Examiner is silent. He has taken us through the reports of the Chemical Examiner, per which the sample contained contents of *Charas.*

4. We find ourselves in agreement with the aforesaid submission of the learned counsel for the appellants. His submission is supported by the judgment, delivered by a Division Bench of this Court, in *Dharam Pal versus State of H.P. and another appeal (Latest HLJ 2007 (HP) 827)*. In the aforesaid case, it has been held that only the resin content of the stuff is *Charas* and that in the absence of the report of the Chemical Examiner about the rest of the contents of the stuff, the quantity of the *Charas*, based on the percentage of the resin found therein by the Chemical Examiner, is required to be worked out and the appellant-accused is to be held responsible for possessing *Charas* only to the extent, the stuff contained the resin content in it.

5. As noticed hereinabove, the total quantity of stuff recovered from the appellants, Bhagwan Dass and Puran Dass, was 1.400 kgs and 1.200 kgs, respectively. The Chemical Examiner has found resin content in it to the extent of 13.23 per cent and 17.41 per cent, respectively. That means the *Charas*/resin content in the stuff recovered from Bhagwan Dass was 185.22 grams and in the stuff recovered from appellant Puran Dass it was 208.92 grams. The quantity in both the cases is less than the commercial quantity, as specified vide Notification No. S.O. 1055(E), dated 19th October, 2001, issued by the Central Government, even though more than the upper limit of the small quantity fixed by the same Notification. Thus, the appellants are liable to be punished not under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act, as done by the trial Court, but under Section 20(B) of the said Act for which no minimum sentence is prescribed. The offence under Section 20(B) is punishable with imprisonment that may extend to ten years and with fine which may extend to Rs.1,00,000/-.

6. Looking to the quantity of resin/*Charas* found in the stuff recovered from the appellants, we feel that the ends of justice would be met in case their sentence is reduced from ten years rigorous imprisonment and a fine of Rs.1,00,000/- to four years rigorous imprisonment and a fine of Rs.20,000/-; in default of payment of fine simple imprisonment for a further period of six months. We order accordingly.

7. The appellants have been in custody since 3.11.2002. Thus, they have been in detention for a period longer than the sentence of substantive imprisonment as reduced by this Court hereinabove. In fact they have undergone imprisonment for a period

more than the term of substantive imprisonment, as reduced hereby plus the imprisonment awarded in default of payment of fine. Therefore, it is ordered that they be set at liberty forthwith, in case their detention is not required in any other case.

8. Appeal stands disposed of with the aforesaid modification in the judgment of the trial Court.

(Surjit Singh), J

August 21, 2007(sd) **(Surinder Singh), J**